

109TH CONGRESS
1ST SESSION

H. R. 1638

To reinstate regulation under the Commodity Exchange Act of futures contracts, swaps, and hybrid instruments involving natural gas, to require review and approval by the Commodity Futures Trading Commission of rules applicable to transactions involving natural gas, to provide for the reporting of large positions in natural gas, to provide for cash settlement for certain contracts of sale for future delivery of natural gas, to temporarily prohibit members of the Commodity Futures Trading Commission from going to work for organizations subject to regulation by the Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 2005

Mr. GRAVES (for himself and Mr. BARROW) introduced the following bill;
which was referred to the Committee on Agriculture

A BILL

To reinstate regulation under the Commodity Exchange Act of futures contracts, swaps, and hybrid instruments involving natural gas, to require review and approval by the Commodity Futures Trading Commission of rules applicable to transactions involving natural gas, to provide for the reporting of large positions in natural gas, to provide for cash settlement for certain contracts of sale for future delivery of natural gas, to temporarily prohibit members of the Commodity Futures Trading Commission from going to work for organizations subject to regulation by the Commission, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commodities Exchange
5 Improvements Act of 2005”.

6 **SEC. 2. REINSTATEMENT OF REGULATION UNDER THE**
7 **COMMODITY EXCHANGE ACT OF FUTURES**
8 **CONTRACTS, SWAPS, AND HYBRID INSTRU-**
9 **MENTS INVOLVING NATURAL GAS.**

10 (a) NATURAL GAS TREATED AS AN AGRICULTURAL
11 COMMODITY.—Section 1a(4) of the Commodity Exchange
12 Act (7 U.S.C. 1a(4)) is amended—

13 (1) by inserting “natural gas,” before “live-
14 stock,”; and

15 (2) by adding at the end the following: “For
16 purposes of this Act and any other Act referencing
17 this paragraph, natural gas shall be considered an
18 agricultural commodity enumerated in this para-
19 graph.”.

20 (b) HYBRID INSTRUMENTS.—Section 405(a) of the
21 Commodity Futures Modernization Act of 2000 (7 U.S.C.
22 27c(a)) is amended by inserting “not having one or more
23 payments indexed to the value, level, or rate of, or pro-
24 viding delivery of, natural gas)” after “hybrid instru-
25 ment”.

1 (c) ELIMINATION OF AUTHORITY TO EXEMPT NAT-
 2 URAL GAS TRANSACTIONS FROM STATUTORY REQUIRE-
 3 MENTS.—Section 4(c) of the Commodity Exchange Act (7
 4 U.S.C. 6(c)) is amended by adding at the end the fol-
 5 lowing:

6 “(6) INAPPLICABILITY TO CERTAIN CONTRACTS
 7 INVOLVING NATURAL GAS.—The preceding provi-
 8 sions of this subsection shall not apply to an agree-
 9 ment, contract, or transaction involving natural
 10 gas.”.

11 (d) EFFECTIVE DATE.—The amendments made by
 12 this section shall take effect 90 days after the date of the
 13 enactment of this Act.

14 **SEC. 3. REGULATORY REVIEW OF RULE CHANGES AND**
 15 **RULES APPLICABLE TO TRANSACTIONS IN-**
 16 **VOLVING NATURAL GAS.**

17 (a) REGULATORY REVIEW OF RULE CHANGES AP-
 18 PPLICABLE TO NATURAL GAS TRANSACTIONS.—

19 (1) IN GENERAL.—Section 5 of the Commodity
 20 Exchange Act (7 U.S.C. 7) is amended by adding at
 21 the end the following:

22 “(f) REGULATORY REVIEW OF RULE CHANGES AP-
 23 PPLICABLE TO NATURAL GAS TRANSACTIONS.—

24 “(1) PRIOR APPROVAL OF RULE CHANGES RE-
 25 QUIRED.—Notwithstanding any other provision of

1 this section, a board of trade that is a designated
2 contract market shall not, without prior approval of
3 the Commission, change a rule, regulation, or con-
4 tract specification of the board of trade that applies
5 to any agreement, contract, or transactions involving
6 natural gas.

7 “(2) CONSIDERATION.—The Commission shall
8 not approve a proposal to make such a change, un-
9 less—

10 “(A) a period of at least 60 days has
11 elapsed since the Commission received the pro-
12 posal;

13 “(B) the Commission has evaluated the
14 economic effects that may result from the
15 change;

16 “(C) the change, if implemented, would be
17 consistent with the core principles specified in
18 section 5(d); and

19 “(D) for not less than 30 days in the 60-
20 day period, the Commission has sought public
21 comment on the proposal.

22 “(3) CRITERIA.—The Commission shall not
23 consider such a change to be consistent with the
24 core principles specified in section 5(d), unless—

1 “(A) the rules, regulations, or contract
2 specifications limit the maximum daily price
3 fluctuation applicable to the agreement, con-
4 tract, or transaction to not more than 8 percent
5 of the settlement price of the prior day’s trad-
6 ing in the agreement, contract, or transaction;
7 and

8 “(B) the Commission finds on the basis of
9 substantial evidence that the resulting rules,
10 regulations, and contract specifications referred
11 to in paragraph (1) are consistent with the core
12 principles.”.

13 (2) SENSE OF THE CONGRESS.—It is the sense
14 of the Congress that the Commodity Futures Trad-
15 ing Commission should evaluate all public comments
16 submitted to the Commission in response to a pro-
17 posal to change a rule, regulation, or contract speci-
18 fication of a board of trade that applies to agree-
19 ments, contracts, or transactions involving natural
20 gas, based on how the change relates to the core
21 principles specified in section 5(d) of the Commodity
22 Exchange Act.

23 (3) EFFECTIVE DATE.—The amendment made
24 by paragraph (1) shall take effect 90 days after the
25 date of the enactment of this Act.

1 (b) REGULATORY REVIEW OF RULES APPLICABLE
2 TO TRANSACTIONS INVOLVING NATURAL GAS.—

3 (1) IN GENERAL.—Not later than 180 days
4 after the date of the enactment of this Act, the
5 Commodity Futures Trading Commission (in this
6 subsection referred to as the “Commission”) shall
7 complete a review of the rules, regulations, and con-
8 tract specifications of each board of trade (as de-
9 fined in section 1a(2) of the Commodity Exchange
10 Act) designated as a contract market under section
11 5 of such Act, in force as of the date of the enact-
12 ment of this subsection, that apply to any agree-
13 ment, contract, or transaction involving natural gas
14 subject to the rules of the contract market.

15 (2) CONSIDERATION.—In conducting the review
16 required by paragraph (1), the Commission shall—

17 (A) seek public comment for a period of
18 not less than 30 days; and

19 (B) determine that each rule, regulation,
20 and contract specification is consistent with the
21 core principles specified in section 5(d) of the
22 Commodity Exchange Act, or require that the
23 rule, regulation, or contract specification be
24 changed to make it so consistent.

1 (3) CRITERIA.—The Commission shall not con-
 2 sider the rules, regulations, and contract specifica-
 3 tions that apply to an agreement, contract, or trans-
 4 action involving natural gas to be consistent with the
 5 core principles specified in section 5(d) of the Com-
 6 modity Exchange Act, unless—

7 (A) the rules, regulations, or contract spec-
 8 ifications limit the maximum daily price fluc-
 9 tuation applicable to the agreement, contract,
 10 or transaction to not more than 8 percent of
 11 the settlement price of the prior day’s trading
 12 in the agreement, contract, or transaction; and

13 (B) the Commission finds on the basis of
 14 substantial evidence that the rules, regulations,
 15 and contract specifications are consistent with
 16 the core principles.

17 **SEC. 4. BACK-UP REPORTING OF LARGE POSITIONS IN-**
 18 **VOLVING NATURAL GAS.**

19 (a) IN GENERAL.—Section 4a of the Commodity Ex-
 20 change Act (7 U.S.C. 6a) is amended—

21 (1) in subsection (e), by striking the last sen-
 22 tence; and

23 (2) by adding at the end the following:

24 “(f) REPORTING OF LARGE POSITIONS INVOLVING
 25 NATURAL GAS.—

1 “(1) IN GENERAL.—In accordance with such
2 rules as shall be prescribed by the Commission, any
3 person holding, maintaining, or controlling any posi-
4 tion in any agreement, contract, or transaction made
5 in connection with any contract for the present or
6 for future delivery of natural gas, any position in
7 any agreement, contract, or transaction having one
8 or more payments indexed to the value, level, or rate
9 of providing natural gas for the present or future
10 delivery, or any quantity of natural gas that is read-
11 ily available for delivery shall file such reports re-
12 garding the position or quantity as the Commission
13 determines to be necessary and appropriate to pre-
14 vent or deter actual or potential manipulation of the
15 price of contracts of sale of natural gas for future
16 delivery. Notwithstanding any other provision of law,
17 including any provision of law that excludes any
18 agreement, contract, transaction, or trading facility
19 from this Act (other than as specifically provided in
20 paragraph (2)), any rule, bylaw, or other require-
21 ment to file any report regarding a position in any
22 agreement, contract, or transaction involving natural
23 gas or quantity of natural gas prescribed in accord-
24 ance with this subsection shall apply to any person
25 holding any such position or quantity.

1 “(2) NO DUPLICATE REPORTS.—Except as oth-
2 erwise provided in this paragraph, the rules pre-
3 scribed under paragraph (1) shall not apply to any
4 holding or position that otherwise is required to be
5 reported to any agency of the United States Govern-
6 ment if the report would otherwise satisfy the re-
7 quirements of this subsection and the report is avail-
8 able to the Commission at the request of the Com-
9 mission. Notwithstanding the preceding sentence,
10 any report of any such holding or position to any
11 agency of the United States shall constitute a state-
12 ment, report, or document required for purposes of
13 section 9.

14 “(3) CRITERIA FOR RULES.—

15 “(A) IN GENERAL.—In prescribing rules
16 under paragraph (1), the Commission shall con-
17 sider—

18 “(i) the purposes for monitoring large
19 positions and quantities in natural gas;

20 “(ii) the effect of such reporting re-
21 quirements on the efficiency and liquidity
22 of the market for natural gas and the mar-
23 ket for any agreement, contract, or trans-
24 action made in connection with any con-

1 tract for the present or for future delivery
2 of natural gas; and

3 “(iii) the costs and burden on the per-
4 sons that would be required to file such re-
5 ports.

6 “(B) FREQUENCY.—The Commission shall
7 require reports under paragraph (1) only in cir-
8 cumstances where manipulation is suspected,
9 except that the Commission may prescribe rules
10 requiring regular or continuous reporting if the
11 Commission finds that such reporting would
12 help to deter or to detect manipulation in any
13 market for any agreement, contract, or trans-
14 action made in connection with any contract for
15 the present or for future delivery of natural
16 gas.

17 “(C) FILING REQUIREMENTS.—Reports re-
18 quired under paragraph (1) shall be filed with
19 the Commission in accordance with such re-
20 quirements regarding the form, timing, and
21 manner of filing such reports, as the Commis-
22 sion may prescribe by rule.

23 “(D) RECORDKEEPING REQUIREMENTS.—
24 Rules prescribed under paragraph (1) may re-
25 quire any person holding, maintaining, or con-

1 trolling a quantity of natural gas that is readily
2 available for delivery, or any position in any
3 agreement, contract, or transaction made in
4 connection with any agreement, contract, or
5 transaction for the present or future delivery of
6 natural gas or any contract requiring one or
7 more payments indexed to the value, level, or
8 rate of, or providing for the present or future
9 delivery of natural gas to make and keep for
10 prescribed periods such records as the Commis-
11 sion determines are necessary or appropriate to
12 ensure that persons covered by reporting re-
13 quirements of paragraph (1) can comply with
14 the reporting requirements.

15 “(4) EXEMPTIONS.—Consistent with the public
16 interest and the purposes of this section, the Com-
17 mission by rule or by order may exempt, in whole or
18 in part, conditionally or unconditionally, any person
19 or class of persons from the requirements of this
20 subsection.

21 “(5) OTHER RULES NOT AFFECTED.—This sub-
22 section shall not be interpreted to prohibit or impair
23 the adoption by any board of trade licensed, des-
24 ignated, or registered by the Commission of any
25 bylaw, rule, regulation, or resolution requiring re-

1 ports of positions in any agreement, contract, or
2 transaction made in connection with a contract of
3 sale for future delivery of natural gas (including
4 such a contract of sale), including any bylaw, rule,
5 regulation, or resolution pertaining to filing or rec-
6 ordkeeping, which may be held by any person sub-
7 ject to the rules of the board of trade, except that
8 any bylaw, rule, regulation, or resolution established
9 by the board of trade shall not be inconsistent with
10 any requirement prescribed by the Commission
11 under this subsection.

12 “(g) VIOLATION OF CERTAIN RULES IS A VIOLATION
13 OF THIS ACT.—It shall be a violation of this Act for any
14 person to violate any bylaw, rule, regulation, or resolution
15 of any board of trade licensed, designated, or registered
16 by the Commission that—

17 “(1) fixes limits on the amount of trading
18 which may be done or positions which may be held
19 by any person under contracts of sale of any com-
20 modity for future delivery or under options on such
21 contracts or commodities; or

22 “(2) establishes requirements regarding reports
23 of any position or quantity which may be held by
24 any person (including any requirements pertaining

1 to filing and keeping records of reports of any such
 2 positions),
 3 if the bylaw, rule, regulation, or resolution has been ap-
 4 proved by the Commission: Provided, That section 9(c)
 5 shall apply only to those who knowingly violate such lim-
 6 its.”.

7 (b) DEADLINE.—The Commission shall prescribe the
 8 rules required by section 4a(f) of the Commodity Ex-
 9 change Act not later than 180 days after the date of the
 10 enactment of this Act.

11 (c) CONFORMING AMENDMENTS.—Section 2 of the
 12 Commodity Exchange Act (7 U.S.C. 2) is amended—

13 (1) in each of subsections (g) and (h)(4)(A), by
 14 inserting “4a(f),” before “5a (to”;

15 (2) in subsection (h)(2)(A), by striking “5b”
 16 and inserting “4a(f), 5b,”; and

17 (3) in subsection (i)(2), by inserting “4a(f) of
 18 this Act,” before “5a of”.

19 **SEC. 5. ADDITIONAL AUTHORITY TO PROVIDE FOR CASH**
 20 **SETTLEMENT OF TRANSACTIONS INVOLVING**
 21 **NATURAL GAS.**

22 (a) IN GENERAL.—Section 4a of the Commodity Ex-
 23 change Act (7 U.S.C. 6a) is further amended by adding
 24 at the end the following:

1 “(h) CASH SETTLEMENT OF NATURAL GAS CON-
2 TRACTS.—

3 “(1) For the purpose of diminishing, elimi-
4 nating, or preventing the burden on interstate com-
5 merce associated with excessive speculation in any
6 commodity under contracts of sale of such com-
7 modity for future delivery made on or subject to the
8 rules of contract markets, the Commission shall pre-
9 scribe rules requiring any board of trade to imple-
10 ment rules that provide for any contract of sale for
11 future delivery of natural gas to be settled in cash
12 in lieu of making delivery of the natural gas but only
13 in circumstances in which the Commission has deter-
14 mined that market conditions suggest the possibility
15 of manipulation.

16 “(2) Any rules prescribed under paragraph (1)
17 shall not be construed as limiting or otherwise im-
18 pairing any authority granted to the Commission or
19 to a board of trade, respectively, under section 5.”.

20 (b) CONFORMING AMENDMENTS.—Section 5 of such
21 Act (7 U.S.C. 7) is amended—

22 (1) in subsection (b)(3)—

23 (A) by striking “or” at the end of subpara-
24 graph (B)(iii);

1 (B) by striking the period at the end of
 2 subparagraph (C) and inserting “; or”; and

3 (C) by adding at the end the following:

4 “(D) any contract of sale for future deliv-
 5 ery of natural gas to be settled in cash in lieu
 6 of making delivery of the commodity.”; and

7 (2) in subsection (d)(6)—

8 (A) by striking “and” at the end of sub-
 9 paragraph (B);

10 (B) by striking the period at the end of
 11 subparagraph (C) and inserting “and”; and

12 (C) by adding at the end the following:

13 “(D) require market participants in any
 14 contract to settle any contract of sale for future
 15 delivery of natural gas in cash in lieu of making
 16 delivery of such commodity.”.

17 (c) DEADLINE.—The Commodity Futures Trading
 18 Commission shall prescribe the rules required by section
 19 4a(h) of the Commodity Exchange Act not later than 180
 20 days after the date of the enactment of this Act.

21 **SEC. 6. CRIMINAL AND CIVIL PENALTIES.**

22 (a) ENFORCEMENT POWERS OF COMMISSION.—Sec-
 23 tion 6(c) of the Commodity Exchange Act (7 U.S.C. 9,
 24 15) is amended in clause (3) of the 10th sentence—

1 (1) by inserting “(A)” after “assess such per-
2 son”; and

3 (2) by inserting after “each such violation” the
4 following: “or (B) in any case of manipulation of, or
5 attempt to manipulate, the price of any commodity,
6 a civil penalty of not more than the greater of
7 \$1,000,000 or triple the monetary gain to such per-
8 son for each such violation,”.

9 (b) MANIPULATIONS AND OTHER VIOLATIONS.—Sec-
10 tion 6(d) of such Act (7 U.S.C. 13b(d)) is amended in
11 the 1st sentence—

12 (1) by striking “paragraph (a) or (b) of section
13 9 of this Act” and inserting “subsection (a), (b), or
14 (f) of section 9”; and

15 (2) by striking “said paragraph 9(a) or 9(b)”
16 and inserting “such subsection (a), (b), or (f)”.

17 (c) NONENFORCEMENT OF RULES OF GOVERNMENT
18 OR OTHER VIOLATIONS.—Section 6b of such Act (7
19 U.S.C. 13a) is amended—

20 (1) in the 1st sentence, by inserting “, or, in
21 any case of manipulation of, or an attempt to ma-
22 nipulate, the price of any commodity, a civil penalty
23 of not more than \$1,000,000 for each such viola-
24 tion” before the period; and

1 (2) in the 2nd sentence, by inserting “, except
2 that if the failure or refusal to obey or comply with
3 the order involved any offense under section 9(f), the
4 registered entity, director, officer, agent, or employee
5 shall be guilty of a felony and, on conviction, shall
6 be subject to penalties under section 9(f)” before the
7 period.

8 (d) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—
9 Section 6c(d) of such Act (7 U.S.C. 13a–1(d)) is amended
10 by striking “(d)” and all that follows through the end of
11 paragraph (1) and inserting the following:

12 “(d) CIVIL PENALTIES.—(1) In any action brought
13 under this section, the Commission may seek and the
14 court shall have jurisdiction to impose, on a proper show-
15 ing, on any person found in the action to have committed
16 any violation—

17 “(A) a civil penalty in the amount of not more
18 than the greater of \$100,000 or triple the monetary
19 gain to the person for each violation; or

20 “(B) in any case of manipulation of, or an at-
21 tempt to manipulate, the price of any commodity, a
22 civil penalty in the amount of not more than the
23 greater of \$1,000,000 or triple the monetary gain to
24 the person for each violation.”.

1 (e) VIOLATIONS GENERALLY.—Section 9(a) of such
2 Act (7 U.S.C. 13(a)) is amended—

3 (1) by striking “(or \$500,000 in the case of a
4 person who is an individual)”;

5 (2) by striking “five years” and inserting “10
6 years”; and

7 (3) in paragraph (2), by striking “false or mis-
8 leading or knowingly inaccurate reports” and insert-
9 ing “knowingly false, misleading, or inaccurate re-
10 ports”.

11 **SEC. 7. 1-YEAR BAN ON MEMBERS OF THE COMMODITY FU-**
12 **TURES TRADING COMMISSION WORKING FOR**
13 **ORGANIZATIONS SUBJECT TO REGULATION**
14 **BY THE COMMISSION.**

15 (a) IN GENERAL.—Section 9 of the Commodity Ex-
16 change Act (7 U.S.C. 13) is amended by adding at the
17 end the following:

18 “(g)(1)(A) During the 1-year period that begins with
19 the date an individual ceases to be a member of the Com-
20 mission, the individual shall not become an employee or
21 agent of any entity subject to regulation by the Commis-
22 sion.

23 “(B) Subparagraph (A) shall apply in the case of an
24 individual who becomes an employee or agent of an entity

1 subject to regulation by the Commission, as a result of
2 a merger or takeover.

3 “(2) Whoever violates paragraph (1) shall be liable
4 for a civil money penalty of \$100,000.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall take effect 90 days after the date of
7 the enactment of this Act.

○